IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 2023 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/12/2004 in WP NO : 22350 OF 2004 on the file of the High Court.)

Between:

M.B.V.Maheswaralu, S/o.Venkata Subbanna Chowdhary,
R/o.D.No.39-27-3, NH5, Appayyanagar,
Marripalem PO, Visakhapatnam

..... APPELLANT

AND

1 Food Corporation of India, rep.by its Manager(P&IR), Head Quarters, 16-20, Barakhamba Lane, New Delhi.
2 Food Corporation of India, rep.by its Zonal Manager, Chennai-600006.
3 Food Corporation of India, rep.by its Senior Regional Manager, Regional officer, Hyderabad.
4 Food Corporation of India, rep.by its District Manager,District office, Visakhapatnam.

.....RESPONDENT(S)

Counsel for the Appellant:MR.A.SRINIVASA SARMA

Counsel for the Respondents: Mr.B.Anjaneyulu

The Court made the following :

ORDER: (Per the Hon'ble Smt Justice T.Meena Kumari)

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The present Writ Appeal is filed by the unsuccessful writ petitioner in W.P.No.22350 of 2004, against the order, dated 09-12-2004, passed by a learned Single Judge of this Court dismissing the writ petition at the stage of admission.

2) The facts in brief are that the appellant herein was working as Assistant Manager (Electrical) in the 4th respondent-Corporation and has put in nearly 33 years of service and has three more years of service, when the respondent Corporation introduced Voluntary Retirement Scheme (for short 'VRS'). Pursuant to the same, the appellant made an application on 09.09.2004 opting to retire from service voluntarily. Subsequently, on 06.10.2004 and 25.11.2004, the appellant made applications to withdraw his option to exercise VRS, on account of his family problems. Alleging that the respondents are not passing any orders on his applications dated 06.10.2004 and 25.11.2004; and on apprehension that the respondent-Corporation may relieve him from service without considering his applications to withdraw his option, the appellant filed W.P.No.22350 of 2004,

before this Court, on 02.12.2004, seeking a direction to the respondent-Corporation to finalise the applications to withdraw his option and to continue him in service. Even while the writ petition is pending, the respondents passed orders and communicated the same to the appellant on 07.12.2004, accepting his voluntary retirement. The grievance of the appellant is that though it is contended before the learned single judge that he has rightly exercised his option to withdraw from VRS through his applications, dated 06.10.2004 and 25.11.2004, even before the same were accepted by the competent authority, the learned Single Judge while considering the specific clause contained in the Voluntary Retirement Scheme introduced by the respondent-Corporation held that once an application is made under the above scheme, it shall be final, and that the employee has no option to withdraw it, even though an option was given to the employer either to accept or reject it. Hence, this Writ Appeal.

3) Learned counsel for the appellant submits that the learned Single Judge has erred in dismissing the writ petition holding that once an option for VRS is given it shall be final. According to him, unless the employee is relieved of his duties, it is deemed that the relationship of employer and employee exists. In support of his contentions, he relied upon the Judgments of the Apex Court in ***BANK OF INDIA V. O.P.SWARNAKAR*** and ***POWER FINANCE CORPORATION LIMITED V. PRAMOD KUMAR BHATIA,*** It is further submitted that since the acceptance has been communicated after filing the writ petition, it can be understood that the action of the employer in accepting the option of the employee, is only an after thought, and subsequent deposit of the amounts on 17.12.2004, accrued to the appellant, is also a consequential action depriving the appellant of his right to continue in the said job.

4) Learned counsel for the respondents, on the other hand, supporting the Judgment

of the learned Single Judge contends that once the offer is accepted by the appellant, he cannot go back and that he has no right, as such, to continue in the employment and prays for dismissal of the Writ Appeal.

5) Prima facie, it is evident that the appellant has not been communicated any order of considering his representations made on 06.10.2004 and 25.11.2004, and that the respondents have chosen to pass orders only after filing the writ petition by the appellant. Subsequently, the respondents have deposited the benefits accrued to the appellant on 17.12.2004. However, the appellant returned the said amount.

6) Adverting to the contentions of the learned counsel it is to be seen that the Apex Court in the decision in ***BANK OF INDIA V. O.P.SWARNAKAR's case*** (1 supra) held that the voluntary retirement scheme was not a proposal or an offer, but merely an invitation to treat and the applications filed by the employees constitutes an offer. In the above decision, the Apex Court also took into consideration its earlier decision in ***POWER FINANCE CORPORATION LIMITED's case*** (2 supra), wherein at para 7, it is held as under:

> *" 7 : It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end."*

7) Having regard to the fact that unless an employee is relieved of his duty, after accepting the offer of voluntary retirement scheme or resignation, jural relationship of

the employer and the employee does not come to an end, as held by the Supreme Court in the above cited decision, and that since the respondents passed orders after filing the writ petition and deposited the amounts during the pendency of the writ appeal, which were returned by the appellant, we are of the opinion that the jural relationship of the employer and employee was in existence. Hence, the appellant is entitled for continuation of his post which he was holding i.e., Assistant General Manager (Electrical), in the respondent Corporation.

8) In view of the above discussion and keeping in mind the Judgments of the Apex Court, referred to above, we allow the writ appeal by setting aside the order of the learned Single Judge, dated 09.12.2004 passed in W.P.No.22350 of 2004, and the appellant is entitled for continuation of his post, which he was holding i.e., Assistant Manager (Electrical), in the respondent Corporation. No order as to costs.

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(T.MEENA KUMARI, J)

Dt:28-01-2005

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(B.SESHASAYANA REDDY, J)

Ts/Mhn

To

1 Manager(P&IR), Food Corporation of India, Head Quarters, 16-20,
Barakhamba Lane, New Delhi.
2 Zonal Manager, Food Corporation of India, Chennai-600006.
3 Senior Regional Manager, Food Corporation of India,
Regional office, Hyderabad.
4 District Manager, District office, Food Corporation of India, Visakhapatnam.

5 2 CD copies.